

National Labor Relations Board

§ 101.43

opinion determining whether it would or would not assert jurisdiction on the basis of the facts before it.

[61 FR 65182, Dec. 11, 1996; 62 FR 52381, Oct. 7, 1997]

§ 101.40 Proceedings following the filing of the petition.

(a) A copy of the petition is served on all other parties and the appropriate Regional Director by the petitioner.

(b) Interested persons may request intervention by a written motion to the Board. Such intervention may be granted at the discretion of the Board.

(c) Parties other than the petitioner may reply to the petition in writing, admitting or denying any or all of the matters asserted therein.

(d) No briefs shall be filed except upon special permission of the Board.

(e) After review of the entire record, the Board issues an advisory opinion as to whether the facts presented would or would not cause it to assert jurisdiction over the case if the case had been originally filed before it. The Board will limit its advisory opinion to the jurisdictional issue confronting it, and will not presume to render an opinion on the merits of the case or on the question of whether the subject matter of the dispute is governed by the Labor Management Relations Act.

§ 101.41 Informal procedures for obtaining opinions on jurisdictional questions.

Although a formal petition is necessary to obtain an advisory opinion from the Board, other avenues are available to persons seeking informal and, in most cases, speedy opinions on jurisdictional issues. In discussion of jurisdictional questions informally with Regional Office personnel, information and advice concerning the Board's jurisdictional standards may be obtained. Such practices are not intended to be discouraged by the rules providing for formal advisory opinions by the Board, although the opinions expressed by such personnel are not to be regarded as binding upon the Board or the General Counsel.

§ 101.42 Procedures for obtaining declaratory orders of the Board.

(a) When both an unfair labor practice charge and a representation petition are pending concurrently in a Regional Office, appeals from a Regional Director's dismissals thereof do not follow the same course. Appeal from the dismissal of a charge must be made to the General Counsel, while appeal from dismissal of a representation petition may be made to the Board. To obtain uniformity in disposing of such cases on jurisdictional grounds at the same stage of each proceeding, the General Counsel may file a petition for a declaratory order of the Board. Such order is intended only to remove uncertainty with respect to the question of whether the Board would assert jurisdiction over the labor dispute.

(b) A petition to obtain a declaratory Board order may be filed only by the General Counsel. It must be in writing and signed. It is filed with the Executive Secretary of the Board in Washington, DC. No particular form is required, but the petition must be properly captioned and must contain the allegations required by § 102.106 of the Board's Rules and Regulations. None of the information sought relates to the merits of the dispute. The petition may be withdrawn any time before the Board issues its declaratory order deciding whether it would or would not assert jurisdiction over the cases.

§ 101.43 Proceedings following the filing of the petition.

(a) A copy of the petition is served on all other parties.

(b) Interested persons may request intervention by a written motion to the Board. Such intervention may be granted at the discretion of the Board.

(c) All other parties may reply to the petition in writing.

(d) Briefs may be filed.

(e) After review of the record, the Board issues a declaratory order as to whether it will assert jurisdiction over the cases, but it will not render a decision on the merits at this stage of the cases.

(f) The declaratory Board order will be binding on the parties in both cases.

PART 102—RULES AND REGULATIONS, SERIES 8

Subpart A—Definitions

- Sec.
 102.1 Terms defined in section 2 of the Act.
 102.2 Act; Board; Board agent.
 102.3 General counsel.
 102.4 Region; subregion.
 102.5 Regional director; officer-in-charge, regional attorney.
 102.6 Administrative law judge; hearing officer.
 102.7 State.
 102.8 Party.

Subpart B—Procedure Under Section 10(a) to (i) of the Act for the Prevention of Unfair Labor Practices

CHARGE

- 102.9 Who may file; withdrawal and dismissal.
 102.10 Where to file.
 102.11 Forms; jurat; or declaration.
 102.12 Contents.
 102.13 [Reserved]
 102.14 Service of charge.

COMPLAINT

- 102.15 When and by whom issued; contents; service.
 102.16 Hearing; change of date or place.
 102.17 Amendment.
 102.18 Withdrawal.
 102.19 Appeal to the general counsel from refusal to issue or reissue.

ANSWER

- 102.20 Answer to complaint; time for filing; contents; allegations not denied deemed admitted.
 102.21 Where to file; service upon the parties; form.
 102.22 Extension of time for filing.
 102.23 Amendment.

MOTIONS

- 102.24 Motions; where to file; contents; service on other parties; promptness in filing and response; default judgment procedures; summary judgment procedures.
 102.25 Ruling on motions.
 102.26 Motions, rulings, and orders part of the record; rulings not to be appealed directly to the Board without special permission; requests for special permission to appeal.
 102.27 Review of granting of motion to dismiss entire complaint; reopening of the record.
 102.28 Filing of answer or other participation in proceedings not a waiver of rights.

INTERVENTION

- 102.29 Intervention; requisites; rulings on motions to intervene.

WITNESSES, DEPOSITIONS, AND SUBPOENAS

- 102.30 Examination of witnesses; deposition.
 102.31 Issuance of subpoenas; petitions to revoke subpoenas; rulings on claim of privilege against self-incrimination; subpoena enforcement proceedings; right to inspect and copy data.
 102.32 Payment of witness fees and mileage; fees of persons taking depositions.

TRANSFER, CONSOLIDATION, AND SEVERANCE

- 102.33 Transfer of charge and proceeding from region to region; consolidation of proceedings in same region; severance.

HEARINGS

- 102.34 Who shall conduct; to be public unless otherwise ordered.
 102.35 Duties and powers of administrative law judges; stipulations of cases to administrative law judges or to the Board; assignment and powers of settlement judges.
 102.36 Unavailability of administrative law judge.
 102.37 Disqualification of administrative law judge.
 102.38 Rights of parties.
 102.39 Rules of evidence controlling so far as practicable.
 102.40 Stipulations of fact admissible.
 102.41 Objection to conduct of hearing; how made; objections not waived by further participation.
 102.42 Filings of briefs and proposed findings with the administrative law judge and oral argument at the hearing.
 102.43 Continuance and adjournment.

ADMINISTRATIVE LAW JUDGE'S DECISION AND TRANSFER OF CASE TO THE BOARD

- 102.45 Administrative law judge's decision; contents; service; transfer of the case to the Board; contents of record in case.

EXCEPTIONS TO THE RECORD AND PROCEEDINGS

- 102.46 Exceptions, cross-exceptions, briefs, answering briefs; time for filing; where to file; service on the parties; extension of time; effect of failure to include matter in exceptions; reply briefs; oral arguments.
 102.47 Filing of motion after transfer of case to Board.

PROCEDURE BEFORE THE BOARD

- 102.48 Action of the Board upon expiration of time to file exceptions to the administrative law judge's decision; decisions by the Board; extraordinary postdecisional motions.